

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/08/2003

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

CRL.O.P.NO.24577 OF 2001

AND

CRL.M.P.NOS.8447 AND 9058 OF 2001

K.S.Mani .. Petitioner

-Vs-

M/s. Varalakshmi Chit Fund

(Vellore) Limited

107/1 Mundy Street

Vellore Town-632 004

rep. By its Secretary

Mr.V.R.Ramakrishnan .. Respondent

This criminal original petition is preferred under Section 482 of Cr.P.C. to call for the records in C.C.No.206 of 2001 on the file of the Judicial Magistrate No.IV, Vellore and quash the same.

For Petitioner : Mr.D.Krishnan

For Respondent : No appearance

:ORDER

The petitioner, who is shown as accused in C.C.No.206 of 2001 on the file of the learned Judicial Magistrate, No.IV, Vellore, has brought forth this petition to quash the said proceedings.

2. As could be seen from the materials available and the submissions made by the learned counsel for the petitioner, the petitioner borrowed a sum of Rs.2,44,000/- on 1.1.1997 from one Mrs.Varalakshmi Chit Fund (Vellore) Ltd. and has executed a promissory note along with his wife and following the default a suit for recovery of the amount with interest was filed by the Chit Fund through its Managing Director V.S.Renugopal Chettiar in O.S.No.296 of 2000 on the file of the Subordinate Court, Vellore, where both the petitioner/accused and his wife appeared and contested the suit. While so, the Secretary of the said Chit Fund has laid the present private complaint before the Judicial Magistrate, No.IV, Vellore stating that the petitioner executed a memorandum of depositing the title deeds for the borrowal of Rs.2,44,000 /- and subsequently, it came to the knowledge of the institution

that the properties given as Security were already sold by the petitioner and thus, he has committed cheating, and hence, he was to be dealt with in accordance with law.

3. The said complaint was taken on file by the learned Judicial Magistrate, Vellore, which is the subject matter of this petition. A copy of the plaint filed by the Chit fund before the Sub Court in O.S. No.296 of 2000 and a copy of the complaint in C.C.No.206/2001 what is sought to be quashed here are placed in the hands of this Court. A perusal of both would clearly indicate that the petitioner/accused borrowed on 1.1.1997 a sum of Rs.2,44,000/- from the said Financial Institution and has executed a pro note along with his wife and the non payment of the same along with interest has given a cause of action for the Financial Institution to file the said suit. A reading of the complaint in C.C.No.206 of 2001 would clearly indicate that the borrowal of Rs.2,44,000/- was made by the accused on 1.1.1997 and he has also given a memorandum of depositing the title deeds, which was already sold during the pendency of the loan. Now, it has got to be pointed out that nowhere it is mentioned in the plaint that there was execution of any memorandum of depositing the title deeds by the accused. It remains to be stated that in the said complaint, the execution of the pro-note by the accused along with his wife on 1.1.1997 is also suppressed. Under the stated circumstances, having filed a suit against the accused and his wife in O.S.No.296 of 2000, which is also pending, the Secretary of the said Chit Fund has come forward with the said complaint. It would be nothing but another action on the same subject matter, which cannot be permitted in law. Hence, the complaint has got to be necessarily quashed. Accordingly, the complaint in C.C.No.206 of 2001 is quashed. The petition is allowed. Consequently, connected Cr.M.Ps are closed.

Index : Yes

Internet : Yes

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To

The Judicial Magistrate No.IV

Vellore

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